

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
- v. - :
:
EDWARD TORRES, :
:
Defendant. :
:
----- -x

ORDER

19 Cr. 169 (VM)

WHEREAS, with the consent of the defendant, EDWARD TORRES, his guilty plea allocution was taken before a United States Magistrate Judge on December 9, 2019; and

WHEREAS, a transcript of the allocution was made and thereafter was transmitted to the District Court; and

WHEREAS, upon review of that transcript, this Court has determined that the defendant entered the guilty plea knowingly and voluntarily and that there was a factual basis for the guilty plea;

IT IS HEREBY ORDERED that the defendant's guilty plea is accepted.

SO ORDERED:

Dated: New York, New York

12 December 2019

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK



U.S. Department of Justice

United States Attorney
Southern District of New YorkThe Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

ORIGINAL

December 2, 2019

BY EMAILAntonia Marie Apps, Esq.
Adam Fee, Esq.
Milbank LLP
55 Hudson Yards
New York, NY 10001***Re: United States v. Edward Torres, 19 Cr. 169 (VM)***

Dear Ms. Apps and Mr. Fee:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Edward Torres ("the defendant") to Count One of the above-referenced Indictment (the "Indictment"). Count One charges the defendant with conspiracy to distribute and possess with intent to distribute mixtures and substances containing a detectable amount of fentanyl, mixtures and substances containing a detectable amount of heroin, and mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Sections 841(b)(1)(C) and 846. This charge carries a maximum term of imprisonment of 20 years; a maximum term of supervised release of life; a mandatory minimum term of supervised release of three years; a maximum fine, pursuant to Title 18, United States Code, Section 3571 and Title 21, United States Code, Section 841(b)(1)(C), of the greatest of \$1,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a \$100 mandatory special assessment.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for conspiring to distribute and possess with intent to distribute fentanyl, heroin, and cocaine from in or about January 2018 through in or about January 2019, as charged in Count One of the Indictment, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegation with respect to Count One of the Information and agrees to forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of said offense and any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

A. Offense Level

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The applicable Guidelines manual is the November 1, 2018 edition.
2. The Guideline applicable to Count One is U.S.S.G. § 2D1.1. Pursuant to U.S.S.G. §§ 2D1.1(a)(5) and 2D1.1(c)(9), the base offense level is 22 because the offense involved at least 80 grams of heroin but less than 100 grams of heroin.
3. Pursuant to U.S.S.G. § 3B1.1(c), a two-level increase is warranted because the defendant was an organizer, leader, manager, or supervisor of the criminal activity.
4. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 21.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has three criminal history points, calculated as follows:

1. The defendant was convicted on or about July 20, 1991, in Bronx County Supreme Court, of first-degree manslaughter, a felony, in violation of New York Penal Law Section 125.50(1), and sentenced to 100 months' to 25 years' imprisonment. Pursuant

to U.S.S.G. §§ 4A1.1(a) and 4A1.2(e)(1), this sentence results in three criminal history points.

2. The defendant was convicted on or about July 20, 1991, in Bronx County Supreme Court, of second-degree criminal possession of a weapon, a felony, in violation of New York Penal Law Section 265.03, and sentenced to 1 to 3 years' imprisonment. Pursuant to U.S.S.G. § 4A1.2(a)(2), this sentence results in zero criminal history points.
3. The defendant was convicted on or about July 20, 1991, in Bronx County Supreme Court, of third-degree criminal possession of a loaded firearm, a felony, in violation of New York Penal Law Section 265.02, and sentenced to 1 to 3 years' imprisonment. Pursuant to U.S.S.G. § 4A1.2(a)(2), this sentence results in zero criminal history points.

Accordingly, the defendant's Criminal History Category is II.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 41 to 51 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 21, the applicable fine range is \$15,000 to \$1,000,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined and found appropriate; information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence.

Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241, of any sentence within or below the Stipulated Guidelines Range of 41 to 51 months' imprisonment, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$1,000,000, and the Government agrees not to appeal any fine that is greater than or equal to \$15,000. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of rights or rights to the defendant may have for court claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act

material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, or impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his removal from the United States is presumptively mandatory and that, at a minimum, he is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, he recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. For example, under federal law, an individual may be subject to denaturalization and removal if his naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that he has discussed the possible immigration consequences (including removal or denaturalization) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including his attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from his guilty plea and conviction.

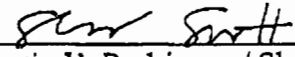
It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement shall not bind any Federal, State, or local prosecuting authority other than this Office.

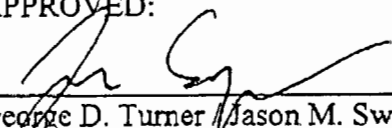
Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

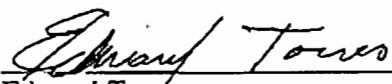
GEOFFREY S. BERMAN
United States Attorney

By: 
Justin V. Rodriguez / Sheb Swett
Assistant United States Attorney
(212) 637-2591 / 6522

APPROVED:

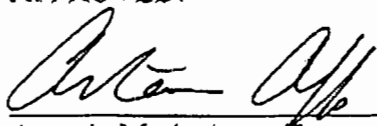

George D. Turner / Jason M. Swergold
Chiefs, Narcotics Unit

AGREED AND CONSENTED TO:


Edward Torres

Dec 9, 2019
DATE

APPROVED:


Antonia Marie Apps, Esq.
Adam Fcc, Esq.
Attorneys for Edward Torres

Dec 9, 2019
DATE

JC8HTorP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 169 (VM) (SLC)

5 EDWARD TORRES,

6 Plea

7 Defendant.

8 New York, N.Y.
9 December 9, 2019
10 10:10 a.m.

11 Before:

12 HON. SARAH L. CAVE,

13 Magistrate Judge

14
15 APPEARANCES

16 GEOFFREY S. BERMAN
17 United States Attorney for the
18 Southern District of New York
19 SEBASTIAN SWETT
20 Assistant United States Attorney

21 MILBANK, TWEED, HADLEY & McCLOY LLP
22 Attorneys for Defendant
23 BY: ANTONIA MARIE APPS
24 DANIEL CURTIS HOOKS
25

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1 (Case Called)

2 THE DEPUTY CLERK: Counsel, please state your
3 appearance for the record.

4 MR. SWETT: Good morning, your Honor. Sheb Swett, for
5 the United States.

6 THE COURT: Good morning, Mr. Swett.

7 MR. HOOKS: Dan Hooks and Antonia Apps, for Edward
8 Torres.

9 THE COURT: Good morning, Mr. Torres.

10 THE DEFENDANT: Good morning.

11 THE COURT: I'm Magistrate Judge Cave. The purpose of
12 this proceeding is to make sure that you understand your
13 rights, to decide whether you're pleading guilty of your own
14 free will, and to make sure you're pleading guilty because you
15 are guilty and not for some other reason.

16 I have before me a consent to proceed before a
17 magistrate judge on a felony plea allocution that you've
18 signed, sir. What this form says is that knowing you have the
19 right to have your plea taken by a United States district
20 judge, you're agreeing to have the plea taken by a United
21 States magistrate judge. You will still be entitled to all the
22 same rights and protections as you were before a district
23 judge. Among other things, if you're found guilty, you will be
24 sentenced by a district judge.

25 Do you understand that, sir?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I will accept your consent.

3 THE DEFENDANT: Thank you.

4 THE COURT: Will the clerk please swear in the
5 defendant.

6 (Defendant sworn)

7 THE DEFENDANT: My name is Edward Torres.

8 THE COURT: Thank you.

9 Mr. Torres, do you understand that any statements you
10 make here may be used against you in a prosecution for perjury,
11 or for making false statements?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: If at any time you don't understand any of
14 my questions or if you want to consult with your attorneys,
15 just say so, because it's very important that you understand
16 every question before you answer. OK?

17 THE DEFENDANT: OK.

18 THE COURT: Can you please tell me your full name.

19 THE DEFENDANT: My name is Edward Torres.

20 THE COURT: What is your age, sir?

21 THE DEFENDANT: 48 years old.

22 THE COURT: Are you a citizen of the United States?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Are you able to read and write in English?

25 THE DEFENDANT: Yes.

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1 THE COURT: What is the extent of your formal
2 education?

3 THE DEFENDANT: GED.

4 THE COURT: Are you now or have you recently been
5 under the continuing care of a doctor or psychiatrist for any
6 reason?

7 THE DEFENDANT: Yes.

8 THE COURT: Does the condition for which you're being
9 treated have any impact on your ability to see, hear, think,
10 reason or understand or make decisions?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you been hospitalized in the past for
13 mental illness?

14 THE DEFENDANT: No.

15 THE COURT: Have you been hospitalized for alcoholism?

16 THE DEFENDANT: No.

17 THE COURT: Narcotics addiction?

18 THE DEFENDANT: Yes.

19 THE COURT: When was that, sir?

20 THE DEFENDANT: When we got arrested -- when I got
21 arrested, they put me into a drug program for heroin.

22 THE COURT: How long ago was that?

23 THE DEFENDANT: Like, January 8, when we got arrested.
24 January -- sometime in January.

25 THE COURT: How long was that treatment?

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1 THE DEFENDANT: I was in the hospital for, like,
2 almost 17 days.

3 THE COURT: As you sit here today, are you under the
4 influence of any mind-altering drug or alcoholic drink?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Have you been able to understand
7 everything I've said so far?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you seen a copy of the indictment in
10 this case?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Have you read it yourself, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand what it says you did?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had a chance to discuss the
17 charge and how you wish to plead with your attorneys?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you satisfied with your attorney's
20 representation of you?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Have you had a full opportunity to discuss
23 this case with them?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you ready to enter a plea today?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Count One of the indictment charges that
3 you, Edward Torres, between January 2018 and January 2019, in
4 the Southern District of New York and elsewhere, intentionally
5 and knowingly combined, conspired, and agreed with others to
6 violate the narcotics laws of the United States, in violation
7 of 21 U.S.C. Sections 841(a)(1) and 846. The government
8 charges that the object of this conspiracy was to distribute
9 and possess with the intent to distribute mixtures and
10 substances containing a detectable amount of heroin, fentanyl,
11 and cocaine.

12 Do you understand this charge?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: How do you wish to plead?

15 THE DEFENDANT: I wish to plead guilty.

16 THE COURT: With respect to the count charging you
17 with narcotics conspiracy, I want you to understand that the
18 maximum penalty is a prison term of 20 years, a term of
19 supervised release of life, and a fine of as much as a million
20 dollars or twice what was gained because of the criminal
21 activity or twice what someone other than yourself lost because
22 of the criminal activity, and a mandatory special assessment of
23 \$100. With respect to this count, there's a mandatory minimum
24 term of supervised release of life. In addition, the Court
25 could order you to pay restitution to any victims.

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1 Do you understand these maximum penalties as I've
2 described them to you?

3 THE DEFENDANT: Yes, ma'am.

4 MR. SWETT: Your Honor, I would just note, I think the
5 mandatory minimum is three years for supervised release.

6 THE COURT: Thank you for correcting me.

7 Do you understand that if you plead guilty, you may be
8 required to give up, or forfeit, to the government any money or
9 property you received from the offense that was used to commit
10 the offense?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you also understand that if, as part of
13 your sentence, you were placed on a term of supervised release
14 and you then violated any of the conditions of that release,
15 you could face an additional term of imprisonment?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You told me earlier that you're a citizen
18 of the United States, but by law I must still tell you that if,
19 in fact, you are not a United States citizen, a guilty plea
20 means you may be removed from the United States and denied
21 admission to the United States or citizenship in the future.

22 Do you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you understand that you have a right to
25 plead not guilty to this charge and a right to a jury trial if

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1 you wish?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that if you pled not
4 guilty and went to trial, you would be presumed innocent, and
5 the burden would be on the government to prove your guilt
6 beyond a reasonable doubt?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Sir, I want you to understand that there
9 are a number of other rights that you would have if you pled
10 not guilty and went to trial. If you went to trial, you would
11 be entitled to be represented by an attorney at all stages of
12 the case, and if you could not hire an attorney, the court
13 would provide one to you for free. At trial you would be
14 entitled to confront and cross-examine any witnesses called by
15 the government to testify against you. You would be entitled
16 to testify in your own behalf. You could call witnesses and
17 present evidence, and the Court would compel the attendance of
18 witnesses you wished to call at trial. Also at trial you would
19 not be required to testify against yourself.

20 Do you understand all these rights as I've described
21 them to you?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand that you give up all
24 these rights if you plead guilty?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that if you enter a
2 guilty plea, you will not be able to withdraw this plea, there
3 will be no trial, and the only remaining step in this case will
4 be sentencing?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you understand that even if you're
7 surprised or disappointed by your sentence, you will still be
8 bound by your guilty plea?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I have before me a letter dated
11 December 2, 2019, from the U.S. Attorney to your attorney
12 containing a plea agreement. Have you read that letter?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Turning to the last page, is that your
15 signature there, sir?

16 THE DEFENDANT: I got to sign it.

17 MR. SWETT: I think our copy is signed.

18 MS. APPS: We gave two signed copies to the AUSA.

19 THE COURT: OK. I have one signed copy here. You
20 signed it this morning, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Thank you.

23 Before you signed it, did you discuss it with your
24 attorney?

25 THE DEFENDANT: Yes.

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1 THE COURT: Did they explain to you all of the terms
2 and conditions?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Apart from what's contained in the letter,
5 have any promises been made to you in order to get you to plead
6 guilty?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: In reviewing the plea agreement, I note
9 that it contains an analysis of how part of our law of
10 sentencing known as the sentencing guidelines may impact the
11 prison term in your case. Based on that analysis, the
12 agreement states the conclusion that the guideline sentencing
13 range can be expected to be from 41 to 51 months.

14 Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that the sentencing
17 judge is not bound by the calculation in the letter and that he
18 will free to do his own calculation which may result in a
19 guideline range that's different from the one in the letter?
20 Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Now you understand that the guideline sentencing
23 sentencing range the sentencing judge believes is called for by
24 the guidelines, that range is just one of the many factors that
25 the judge will consider in determining your sentence and that

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1 the judge has discretion to give you a prison sentence below or
2 above that range, anywhere up to the maximum sentence of
3 imprisonment of 20 years that I told you about earlier? Do you
4 understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you also understand that under the
7 terms of this plea agreement, if the judge sentences you to a
8 prison term that is 51 months or less, you're giving up your
9 right to appeal that sentence or to challenge it in any other
10 way, such as through a writ of habeas corpus?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Also, do you understand that the plea
13 agreement says you cannot appeal any fine of a million dollars
14 or less and that you cannot appeal any lawful sentence of
15 supervised release?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Knowing all of this, do you still wish to
18 plead guilty to Count One of the indictment?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Has any force or threats been used, either
21 direct or indirect, to influence how you plead today?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Is your plea voluntary, made of your own
24 free will?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: Did you, in fact, commit the offense
2 that's charged in Count One of the indictment?

3 THE DEFENDANT: Yes. Yes, ma'am.

4 THE COURT: Before I ask you to tell me what you did,
5 Mr. Torres, I'll ask the government to summarize the elements
6 of the offense and, if they wish, to tell me any evidence that
7 they would have offered at trial.

8 MR. SWETT: Your Honor, the elements of this count
9 are, first, that two or more people agreed to violate the
10 federal narcotics laws; and, second, that the defendant
11 knowingly and willingly became a member of that agreement or
12 conspiracy, knowing the object of the conspiracy. And here,
13 the object was to distribute and possess with an intent to
14 distribute mixtures and substances containing a detectable
15 amount of heroin, fentanyl, cocaine. Additionally, the
16 government would have to prove venue in the Southern District
17 of New York by a preponderance of the evidence.

18 Very briefly, if the case went to trial, the
19 government through undercover police testimony, through video
20 recordings, and through cooperator testimony, as well as lab
21 reports and the physical seizure of drugs would prove that the
22 defendant participated in the conspiracy.

23 THE COURT: Thank you, Mr. Swett.

24 Mr. Torres, please tell me in your own words what you
25 did that makes you guilty of the charge against you.

1.3

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1 THE DEFENDANT: I participated in selling heroin in
2 the Bronx, 147 in the Bronx.

3 THE COURT: 147th Street?

4 THE DEFENDANT: Yes, in the Bronx.

5 THE COURT: And you did that with other people?

6 THE DEFENDANT: Yes.

7 THE COURT: What drugs were involved?

8 THE DEFENDANT: Heroin.

9 THE COURT: Heroin.

10 Was fentanyl also involved?

11 THE DEFENDANT: I don't -- I didn't know it had --
12 like, I didn't know it had fentanyl.

13 MR. SWETT: Your Honor, I'll proffer that the lab
14 results showed that some of the heroin samples had fentanyl and
15 cocaine. I believe knowing one of the objects, that is the
16 heroin, is sufficient.

17 THE COURT: Thank you.

18 Mr. Torres, you also understand that the time period
19 at issue here is from January 2018 through January 2019,
20 correct?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Are there any other questions from
23 either side wishes me to ask of Mr. Torres?

24 MR. SWETT: Your Honor, I would just request that the
25 Court ask him if he knew what he did was in violation of the

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1 law.

2 THE COURT: Mr. Torres, did you understand that what
3 you did violated the law?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: On the basis of the defendant's response
6 to my questions and my observations of his demeanor, I find
7 that he's fully competent to enter an informed plea at this
8 time. I also conclude that he understands the nature of the
9 charge and the consequences of his plea. Finally, I'm
10 satisfied that his plea is voluntary and that there's a factual
11 basis for it. Accordingly, I recommend that the proffered plea
12 to Count One of the indictment be accepted. A presentence
13 investigation report is ordered.

14 Has the district judge is set a sentencing date?

15 MR. SWETT: No, your Honor. We would request a
16 control date three months out.

17 THE COURT: Three months out would take us to -- hold
18 on one second -- March 9, 2020. So we'll set the sentencing
19 date for March 9, 2020.

20 Mr. Swett, the prosecution case summary for purposes
21 of the presentence report is to be delivered to the probation

22 department no later than 45 days from today. Understood?

23 MR. SWETT: Yes, your Honor.

24 THE COURT: Thank you.

25 Ms. Apps and Mr. Fee, if you would make yourselves

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1 available to be interviewed by probation, by the probation
2 department, no later than 14 days from today as well.

3 MS. APPS: Yes, your Honor.

4 THE COURT: OK. Thank you.

5 Anything further on this matter from either side?

6 MR. SWETT: No. Thank you, your Honor.

7 THE COURT: Thank you.

8 Thank you, Mr. Torres.

9 THE DEFENDANT: Thank you, ma'am.

10 THE COURT: We're adjourned.

11 (Adjourned)

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U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 11, 2019

BY FAX

The Honorable Victor Marrero
United States District Court Judge
500 Pearl Street
New York, New York 10007

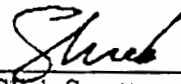
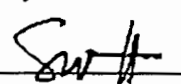
Re: *United States v. Edward Torres, 19 Cr. 169 (VM)*

Dear Judge Marrero: .

Please find enclosed a proposed order accepting the plea of the defendant in the above-captioned matter. The Government requests that the Court set a sentencing date.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

By:  
Sheb Swett
Assistant United States Attorney
(212) 637-6522

cc: Antonia Apps, Esq. (by email)